

200929023



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 20 2009

Uniform Issue List: 411.00-00

SET:EP:RA:T1

Attn:

Re: Control Number:

Legend:

Taxpayer =

Plan X =

Shareholder A =

Shareholder B =

Shareholder C =

Amount 1 =

Amount 2 =

Loan 1 =

Loan 2 =

Loan 3 =

Loan 4 =

Loan 5 =

Dear :

This is in response to correspondence dated August 16, 2007, as supplemented and modified by additional correspondence dated March 2, and March 11, 2009, from your authorized representative, in which you request a letter ruling regarding the applicability of the delayed effective date under section 904 of the Pension Protection Act of 2006 (P.L. 109-280) (PPA '06) to the vesting schedule of Plan X.

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested:

Taxpayer, a subchapter S corporation, established Plan X effective January 1, 2004, for the benefit of its employees. Plan X is an employee stock ownership plan (ESOP) intended to comply with section 4975(e)(7) of the Internal Revenue Code ("Code"). Plan X provided for a five-year cliff vesting schedule.

In an exempt loan transaction, executed on June 2, 2004 (Loan 1), Plan X borrowed Amount 1 from Taxpayer. This amount was used to purchase a total of shares of employer securities from Shareholders A, B, and C. Loan 1 provided for scheduled payments commencing June 1, 2005 with final payment to be made on June 1, 2016. In another exempt loan transaction, executed on June 2, 2004, an additional total of shares of employer securities were sold by Shareholders A, B, and C, to Plan X in return for three promissory notes payable to them (Loans 2, 3 and 4, respectively). All the shares purchased as part of these two loan transactions are employer securities within the meaning of section 409(l).

On March 31, 2006, Plan X borrowed Amount 2 from Taxpayer (Loan 5) and used such amounts to pay off the remaining balance owing on Loans 2, 3 and 4 in a refinancing transaction. Loan 1 remained in effect and was not modified in connection with the March 31, 2006, transaction. It has not yet been fully repaid.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") rule on the following issue:

The accelerated vesting schedules under section 411(a)(2)(B), as amended by PPA '06, will not apply to Plan X for any plan year beginning the earlier of June 1, 2016 or the date upon which Loan 1 is fully repaid.

Section 4975(e) of the Code provides that the term employee stock ownership plan means a defined contribution plan: (A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a) of the Code, and which are designed to invest primarily in qualifying employer securities; and (B) which is otherwise defined in regulations by the Secretary. Section 4975(e)(8) of the

Code provides that the term qualifying employer security means any employer security within the meaning of section 409(l) of the Code.

Section 411(a) of the Code provides that, a trust shall not constitute a qualified trust under section 401(a) of the Code unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph 8)) and in addition satisfies the requirements of subsection (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

Prior to the effective date of PPA '06, a defined contribution plan satisfied the minimum vesting requirements of Section 411(a) of the Code with respect to employer nonelective contributions if it maintained a 5-year cliff vesting schedule or a 3 to 7 year graded vesting schedule. Section 904 of PPA '06 amended the minimum vesting requirements to require faster vesting of employer nonelective contributions to a defined contribution plan.

Section 411(a)(2)(B)(i), of the Code, as amended by PPA '06, generally provides that a defined contribution plan satisfies the requirements of this section if it satisfies the requirements of clause (ii) or (iii). A plan satisfies the requirements of clause (ii) if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions. A plan satisfies the requirements of clause (iii) if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of Service	Nonforfeitable Percentage
2	20
3	40
4	60
5	80
6	100

Section 411(a)(2)(B) of the Code as amended by section 904 of PPA '06 generally applies to contributions for plan years beginning after December 31, 2006.

Notwithstanding this effective date, section 904 of PPA '06 provides that for any ESOP which had outstanding on September 26, 2005, a loan incurred for the purpose of acquiring qualifying employer securities (as defined in section 4975(e)(8) of the Code),

the vesting rule amendments do not apply to any plan year beginning before the earlier of the date on which the loan: (a) is fully repaid; or, (b) was, as of September 26, 2005, scheduled to be fully repaid (section 904(c)(4)).

With respect to your ruling request, Loan 1 was incurred for the purpose of acquiring qualifying employer securities (as defined in Code section 4975(e)(8)). The loan was outstanding on September 26, 2005, with the final payment scheduled to be made on June 1, 2016.

Accordingly, we conclude that the accelerated vesting schedules under section 411(a)(2)(B), as amended by PPA '06, will not apply to Plan X for any plan year beginning earlier of June 1, 2016 or the date upon which, Loan 1 is fully repaid.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact _____, (I.D. # _____), at (_____) _____.

Sincerely yours,



Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter
Notice of Intention to Disclose, Notice 437

cc: